

## **REMARKS**

Reconsideration of this application and withdrawal of the rejections set forth in the Office Action mailed March 3, 2004, is requested in view of the following remarks. Claims 1-46 are pending and at issue in the present application.

### **Claim Objections**

In the office action, the Examiner objected to Claims 6-8, 10-12, 29-31 and 33-35 because the Examiner found that the recited protein acronyms were not defined in the specification nor in the claim terms. Applicant respectfully points out that all of the fluorescent protein acronyms used in the claims, including “GFP” are specifically spelled out and defined in the original specification as filed. For example, at pages 1-2 of the specification, each of the various fluorescent proteins and their associated acronyms is defined:

“including green fluorescent protein (GFP), enhanced green fluorescent protein (eGFP), yellow fluorescent protein (YFP), enhanced yellow fluorescent protein (eYFP), blue fluorescent protein (BFP), enhanced blue fluorescent protein (eBFP), cyan fluorescent protein (CFP) and enhanced cyan fluorescent protein (eCFP).”

### **Rejection of Claims 1-17, 20, 22-40, 43, 45 and 46 under 35 U.S.C. § 103(a)**

The Examiner rejected Claims 1-17, 20, 22-40, 43, 45 and 46 under 35 U.S.C. § 103(a), as being as being unpatentable over U.S. Patent No. 3,892,199 to Huyler (“Huyler”) in view of WO 00/49150 to Gong et al. (“Gong et al.”). Applicant respectfully traverses this rejection and submits that it should be withdrawn because the Examiner has failed to set forth a prima facie

case of obviousness. In particular, the Examiner has failed to point to any teaching or suggestion in the cited prior art of a fish tank having an excitation light source “configured to emit light at a wavelength selected to be optimal for causing an ornamental fish to fluoresce.”

The Examiner has not identified any teaching or suggestion in the cited prior art to optimize the excitation light source within a fish tank to cause the ornamental fish to fluoresce. The fluorescent light source that the Examiner identifies in Huyler is a type of light which emits white light by a reaction within a fluorescent bulb. Contrary to the Examiner’s statement in the Office Action, Huyler does not appear to disclose a “blue light,” or “ultraviolet light” as asserted by the Examiner in rejecting claims 2 and 26. Accordingly, the Examiner points to no teaching or suggestion in the cited prior art to produce a fish tank having a light source configured to optimize the fluorescence of an ornamental fish.

Moreover, the Examiner points to no teaching or suggestion to combine the teachings of Huyler and Gong et al. to produce Applicant’s claimed invention. The Examiner merely states that it would have been obvious to because the modification of Huyler in view of the teachings of Gong et al. is “merely the selection of alternate equivalent know[n] fish for enhanced aesthetic appeal to the tank.” However, the Examiner has failed to identify any disclosure which teaches or suggests that the fluorescent light of Huyler is configured to optimize the fluorescence of the fish disclosed in Gong et al. Accordingly, the Examiner has failed to set forth a prima facie case the Applicant’s claimed invention is obvious.

#### Rejection of Claims 18-19, 41 and 42 under 35 U.S.C. § 103(a)

The Examiner rejected Claims 18-19, 41 and 42 under 35 U.S.C. § 103(a), as being unpatentable over Huyler in view of WO 00/49150 to Gong et al. (“Gong et al.”), as applied to

Claims 1 and 25 in the above rejection, and further in view of U.S. Patent No. 5,775,260 to Jansen (“Jansen”). The Applicant respectfully submits that this rejection should be withdrawn because the Examiner has failed to satisfy her burden of presenting a prima facie case of obviousness.

Claims 18-19, 41 and 42 depend from either Claim 1 or 25 and are therefore patentable over the cited prior art for at least the same reasons discussed above with respect to Claims 1 and 15. In addition, these claims are further patentable over the cited prior art because the Examiner has failed to identify any teaching or suggestion to combine Jansen with the teachings of Huyler and/or Gong et al to produce Applicant’s claimed invention. The Examiner has not pointed to any teaching or suggestion that the second light source of Jansen is an “excitation light source” which “excites” a fluorescent light source or that it emits light at a different wavelength than a first excitation light source.

Accordingly, Claims 18-19 and 41 and 42 are patentable as being non-obvious over the cited prior art.

Rejection of Claims 21 and 44 under 35 U.S.C. § 103(a)

The Examiner rejected Claims 21 and 44 under 35 U.S.C. § 103(a), as being unpatentable over Huyler in view of WO 00/49150 to Gong et al. (“Gong et al.”), as applied to Claims 3 and 25 in the above rejection, and further in view of U.S. Patent No. 6,474,265 to Powell (“Powell”). Applicant respectfully requests withdrawal of this rejection on the grounds that the Examiner has failed to set forth a prima facie case of obviousness.

Again, Claims 21 and 44 depend from either Claim 1 or 25 and are therefore patentable over the cited prior art for at least the same reasons discussed above with respect to Claims 1 and

15. In addition, these claims are further patentable over the cited prior art because the Examiner has not set forth any teaching or suggestion to combine Powell with the teachings of Huyler and/or Gong et al.

Accordingly, Claims 21 and 44 are also patentable over the cited prior art.

Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully submits that all of the Examiner's rejections have been overcome. Accordingly, allowance is earnestly solicited.

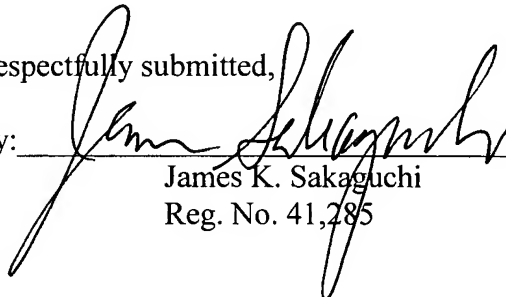
If the Examiner feels that a telephone interview could expedite resolution of any remaining issues, the Examiner is encouraged to contact Applicant's undersigned representative at the phone number listed below.

Dated: August 31, 2004

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Respectfully submitted,

By: \_\_\_\_\_

  
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